

www.cozen.com

PRINCIPAL OFFICE:

PHILADELPHIA **NEW YORK MIDTOWN**
(215) 665-2000 (212) 509-9400
(800) 523-2900 (800) 437-7040

ATLANTA **NEWARK**
(404) 572-2000 (973) 286-1200
(800) 890-1393 (888) 200-9521

CHARLOTTE **SANTA FE**
(704) 376-3400 (505) 820-3346
(800) 762-3575 (866) 231-0144

CHERRY HILL **SAN DIEGO**
(856) 910-5000 (619) 234-1700
(800) 989-0499 (800) 782-3366

CHICAGO **SAN FRANCISCO**
(312) 382-3100 (415) 617-6100
(877) 992-6036 (800) 818-0165

DALLAS **SEATTLE**
(214) 462-3000 (206) 340-1000
(800) 448-1207 (800) 423-1950

DENVER **TORONTO**
(720) 479-3900 (416) 361-3200
(877) 467-0305 (888) 727-9948

HOUSTON **TRENTON**
(832) 214-3900 (609) 989-8620
(800) 448-8502

LONDON **WASHINGTON, D.C.**
011 44 20 7864 (202) 912-4800
2000 (800) 540-1355

LOS ANGELES **W. CONSHOHOCKEN**
(213) 892-7900 (610) 941-5000
(800) 563-1027 (800) 379-0695

MIAMI **WILMINGTON**
(305) 704-5940 (302) 295-2000
(800) 215-2137 (888) 207-2440

NEW YORK DOWNTOWN
(212) 509-9400
(800) 437-7040

500 Attorneys • 23 Offices

AMENDMENT TO NEW YORK LAW REQUIRES WRITTEN AGREEMENTS WITH COMMISSIONED SALESPERSONS

By: Michael C. Schmidt, Esquire

Cozen O'Connor
909 Third Avenue, New York, NY 10022
1055 Franklin Avenue, Garden City, NY 11530
Phone: (212) 453-3937, Fax (866) 736-3682
mschmidt@cozen.com

As of October 16, 2007, New York law has been amended to require that the terms of employment for all commissioned salespersons be put in writing. While many employment relationships are not reduced to a written agreement between the parties, the potential confusion and difficulty that has arisen in the context of commissioned salespersons in determining when commissions are owed and how they are calculated, has resulted in a legislative attempt to provide some minimum requirements.

Accordingly, Section 191[1][c] of the New York State Labor Law now provides the following:

- The writing between the employer and commissioned salesperson must contain, at a minimum: (i) A description of how wages, salary, drawing account, commissions, and all other monies earned and payable to the salesperson are to be calculated; (ii) If the parties' agreement provides for a recoverable draw on commissions, the frequency of reconciliation between the draw and any commissions earned; and (iii) Details concerning the manner in which wages, salary, drawing account, commissions and all other monies earned will be paid in the event of termination of the employment relationship by either party.
- The writing must be signed by both the employer and the commissioned salesperson, and must be retained by the employer for a minimum period of three years.
- If the employer fails to provide the required writing, or fails to update any existing writing to conform to the new requirements, a presumption will arise in any subsequent dispute that the terms of employment are as presented by the commissioned salesperson – not the employer.

Three points are worth noting with regard to this amendment. First, the statute, as amended, does *not* impose any particular terms or conditions on the employment relationship. That is, the law still does not dictate to employers, for example, how commissions and other monies must be calculated or payable, how frequently a reconciliation must take place, or the actual circumstances under which commissions will be earned and payable upon termination. The amendment to Section 191[1][c] only states that the terms of employment, whatever they may be, must be put in a writing signed by both parties.

Second, the amendment does not itself alter the at will nature of employment. Therefore, absent any agreed-upon term of employment, any writing should re-affirm that the salesperson's employment remains at will, and therefore can be terminated by either party at any time, with or without reason.

Finally, the amendment does not render void any written agreement that already exists between an employer and a commissioned salesperson. However, employers should ensure that any such prior writing at a minimum fulfills the requirements contained in the new law.

If you would like to discuss any aspects of these changes and how they might impact your business or organization, please contact Michael C. Schmidt at 212-453-3937 or mschmidt@cozen.com. For information about our firm's labor and employment practice, please contact Mark J. Foley at 215-665-6904 or mfoley@cozen.com.